



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

APPLICANT: Robert C. Heath et al )  
SERIAL NO.: 09/491094 )  
FILED: 01/24/2000 )  
FOR: DISPOSABLE LID FOR A CUP )  
DOCKET NO.: 006565.00002 )  
ART UNIT: 3727 )

EXAMINING ATTORNEY: Hylton, Robin.

U.S. Patent & Trademark Office  
Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**APPELLANT'S REPLY**

This is in response to the Examiner's Answer dated 03/24/2005.

The Examiner's Answer argues, as reasons for sustaining rejection, that:

1. Dvoracek's clamp walls are structurally equivalent;
2. Appellant "asserts" that Dvoracek "captures," not clamps;
3. Dvoracek is capable of performing Appellant's intended use;
4. Dvoracek is capable of use with a cup; and
5. It would be obvious to use Appellant's frustoconical spout.

**CERTIFICATE OF MAILING UNDER 37 CFR 1.10**

I hereby certify that this document and any document referred to as being attached therein is being deposited with the U.S. Postal Service in an envelope as "First Class Mail" addressed to: Mail Stop Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on

*5/18/05*  
Frank J. Catalano

Appellant respectfully disagrees, the following enumerated responses to these arguments corresponding to the enumerations of the Examiner's arguments as given above:

1. Dvoracek's clamp walls are not structurally equivalent. The narrowest part of Dvoracek's outer lip is not opposed by any inner lip and so could not clamp the rim of the cup.
2. Appellant's "assertion" is not whimsical. It is taken directly from the reference (Col.4, Ln.12-14). The narrowest portion of Dvoracek's outer lip does not even touch the cup. The outer lip touches only the captured ridge 32 of the can, a ridge which is not present on a rim of a cup.
3. Dvoracek cannot perform Appellant's use because the structure of Dvoracek requires a ridge (like the ridge formed by the folded top and sidewalls of a metal can). Cups do not have such a ridge.
4. Dvoracek does not have any structure opposed to its narrowest point on the outer lip. Therefore, Dvoracek could not clamp the rim of the cup between opposed lips.
5. The art is crowded. There is no reference teaching the claimed contour. There is no basis for the Examiner's conclusion outside of Appellant's own disclosure.

## CONCLUSION

Appellant respectfully submits that the claims in this application are allowable for the reasons set forth in Appellant's Brief and in this Reply and respectfully requests that the Examiner's rejections of the claims be reversed by the Board.

Respectfully submitted



---

Frank J. Catalano  
Registration No. 25,836  
PTO Customer No. 07303  
GABLE & GOTWALS  
100 West 5th St., 10th Floor  
Tulsa, OK 74103  
Tel: (918) 595-4963  
Fax: (918) 595-4990  
E-mail: [iplaw@gablelaw.com](mailto:iplaw@gablelaw.com)